

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2251

Introduced by Assembly Member Mark Stone

February 18, 2016

~~An act to add Article 24 (commencing with Section 70050) to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, relating to student financial aid. An act to amend Section 22000 of, to amend the heading of Division 9 (commencing with Section 22000) of, and to add Chapter 3.5 (commencing with Section 22660) to Division 9 of, the Financial Code, relating to student loan servicers.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2251, as amended, Mark Stone. ~~Student Loan Borrowers' Bill of Rights.~~ *Student loan servicers: licensing and regulation: Student Loan Borrower's Bill of Rights.*

(1) *The California Finance Lenders Law generally provides for the licensure and regulation of persons who are engaged in the business of making consumer or commercial loans by the Commissioner of Business Oversight, as specified, and makes a willful violation of its provisions a crime.*

This bill would expand the California Finance Lenders Law and the authority of the commissioner to include the licensure, regulation, and oversight of student loan servicers engaging in the servicing of student education loans for student loan borrowers, as those terms are defined, and would rename the law the California Finance Lenders Law and Student Loan Borrower's Bill of Rights. The bill would prohibit a person from acting as a student loan servicer without a license, unless exempt from the licensing requirement. The bill would require a person applying

for a license to, among other things, pay an unspecified fee to pay the actual costs for the investigation of the application and to sign the application under penalty of perjury. By expanding the scope of the crime of perjury and the basis for a violation of the California Finance Lenders Law, this bill would impose a state-mandated local program. The bill would specify the basis for the commissioner to deny, revoke, or suspend a license that includes, among other basis, a failure to comply with an investigation by the commissioner. The bill would make legislative findings in support of its provisions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Existing law establishes the Student Aid Commission as the primary state agency for the administration of state-authorized student financial aid programs available to students attending all segments of postsecondary education in this state.

This bill would establish the Student Loan Borrowers' Bill of Rights, which would require student educational loan servicers to provide each of their student loan borrowers in this state with (1) reliable information about the borrower's loan and repayment options, (2) quality customer service and fair treatment, and (3) meaningful access to federal affordable repayment and loan forgiveness benefits available to the borrower.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Student loan debt is a national crisis. More than 40,000,000
- 4 people in the United States owe some amount of student
- 5 educational loan debt. Total student educational debt in the United
- 6 States currently exceeds \$1.2 trillion, surpassing both the amount
- 7 of credit card debt and car loans. With college costs continuing
- 8 to rise, student educational debt continues to rise, and there is no
- 9 reduction in sight.

1 ***(b) While California's financial aid programs are some of the***
2 ***strongest in the nation and our state's college graduates have***
3 ***among the lowest educational debt burdens, California students***
4 ***and graduates still incur significant debt. According to The College***
5 ***Institute for College & Success, 55 percent of California's***
6 ***graduating class of 2014 has student educational loan debt.***
7 ***According to the United States Department of Education, as of***
8 ***January 2015, there were approximately 4,156,00 student***
9 ***educational loan borrowers in California, and the total student***
10 ***educational loan debt outstanding for Californians was***
11 ***approximately \$1.2 billion.***

12 ***(c) Student educational loan debt is a hindrance on the state's***
13 ***economy, preventing borrowers from achieving financial***
14 ***independence, buying property, and starting businesses.***

15 ***(d) Student educational loan servicers administer student loans,***
16 ***serving as a critical link between borrowers and lenders in***
17 ***managing accounts, processing payments, and communicating***
18 ***directly with borrowers. Despite this critical relationship,***
19 ***according to the federal Consumer Financial Protection Bureau***
20 ***(CFPB), there are no consistent, marketwide federal standards***
21 ***for student educational loan servicing.***

22 ***(e) The CFPB released a report in September 2015 that found***
23 ***that student educational loan borrowers encounter servicers that***
24 ***discourage borrower-friendly alternative payment plans, fail to***
25 ***respond to questions and payment processing errors, and fail to***
26 ***provide sufficient information to borrowers regarding payments,***
27 ***benefits, interest rates, and other charges.***

28 ***(f) It is the intent of the Legislature to promote all of the***
29 ***following:***

30 ***(1) Meaningful access to federal affordable repayment and loan***
31 ***forgiveness benefits.***

32 ***(2) Reliable information about student educational loans and***
33 ***loan repayment options.***

34 ***(3) Quality customer service and fair treatment.***

35 ***SEC. 2. The heading of Division 9 (commencing with Section***
36 ***22000) of the Financial Code is amended to read:***

37
38 **DIVISION 9. CALIFORNIA FINANCE LENDERS LAW**
39 **AND THE CALIFORNIA STUDENT LOAN BORROWER'S BILL**
40 **OF RIGHTS**

SEC. 4. Chapter 3.5 (commencing with Section 22660) is added to Division 9 of the Financial Code, to read:

(f) “Person” means a natural person, a sole proprietorship, a corporation, a partnership, a limited liability company, an association, a trust, a joint venture, an unincorporated

1 organization, a joint stock company, a government, or a political
2 subdivision of a government, and any other entity.

3 (g) “Servicing” means any of the following activities:

4 (1) Receiving any scheduled periodic payments from a student
5 loan borrower pursuant to the terms of a student education loan.

6 (2) Applying the payments of principal and interest and other
7 payments with respect to the amounts received from a student loan
8 borrower, as may be required pursuant to the terms of a student
9 education loan.

10 (3) Performing other administrative services with respect to a
11 student education loan.

12 (h) “Student education loan” means any loan primarily for
13 personal use to finance education or other school-related expenses.

14 (i) “Student loan borrower” means either of the following:

15 (1) A person who is resident of the state who has received or
16 agreed to pay a student education loan.

17 (2) A person who is a resident of the state who shares
18 responsibility for repaying a student education loan with a person
19 described in paragraph (1).

20 (j) “Student loan servicer” means, to the extent authorized by
21 federal law, an entity or person, wherever located, responsible for
22 the servicing of a student educational loan for a student loan
23 borrower. “Student loan servicer” shall not include a bank or
24 credit union.

25 22660.5. A licensee shall provide a student loan borrower with
26 all of the following:

27 (a) Accurate information about all the student education loan
28 repayment options applicable to the student loan borrower.

29 (b) Quality customer service and fair treatment.

30 (c) Complete and accurate information on federal affordable
31 repayment and loan forgiveness benefits applicable to the student
32 loan borrower.

33 22660.10. (a) A person shall not act as a student loan servicer,
34 directly or indirectly, without a license from the commissioner
35 pursuant to this chapter.

36 (b) Notwithstanding subdivision (a), the following persons are
37 exempt from the licensing requirement in subdivision (a):

38 (1) A bank, trust company, insurance company, or industrial
39 loan company doing business under the authority of, or in
40 accordance with, a license, certificate, or charter issued by the

1 *United States or any state, district, territory, or commonwealth of*
2 *the United States that is authorized to transact business in this*
3 *state.*

4 (2) *A federally chartered savings and loan association, federal*
5 *savings bank, or federal credit union that is authorized to transact*
6 *business in this state.*

7 (3) *A savings and loan association, savings bank, or credit union*
8 *organized under the laws of this or any other state that is*
9 *authorized to transact business in this state.*

10 (4) *A wholly owned service corporation of a savings and loan*
11 *association or savings bank organized under the laws of this state*
12 *or the wholly owned service corporation of a federally chartered*
13 *savings and loan association or savings bank that is authorized*
14 *to transact business in this state.*

15 (c) *A person shall file an application for a license under this*
16 *chapter with the commissioner to engage in servicing student*
17 *education loans as a student loan servicer in this state.*

18 (d) *A licensee shall not engage in servicing a student education*
19 *loan as a student loan servicer under a name other than the name*
20 *that appears on a license.*

21 (e) *The commissioner may promulgate regulations on the*
22 *business activity that may be conducted at a location where a*
23 *licensee engages in servicing student education loans to prohibit*
24 *the conduct of business activity that facilitates evasions of the*
25 *purposes of this chapter.*

26 (f) *A licensee shall make available to the commissioner all of*
27 *the licensee's records pertaining to servicing a student educational*
28 *loan for a student loan borrower, including, but not limited to, all*
29 *books, accounts, papers, and files, regardless of the location of*
30 *those records, within 10 calendar days of a request from the*
31 *commissioner.*

32 22660.15. (a) *The commissioner shall issue a license to a*
33 *person to engage in business as a student loan servicer if all of*
34 *the following requirements have been met:*

35 (1) *The person filed a complete application for a license in a*
36 *form prescribed by the commissioner.*

37 (2) *The person signed the application under penalty of perjury.*

38 (3) *The person made a payment of (____) as a reasonable fee*
39 *to pay the actual costs for the department to investigate the*
40 *application.*

1 (4) *The department has completed an investigation of the*
2 *application.*

3 (b) *Upon reasonable notice and opportunity to be heard, the*
4 *commissioner may deny an application of a person to engage in*
5 *business as a student loan servicer for any of the following reasons:*

6 (1) *The person made a false statement of a material fact on the*
7 *application.*

8 (2) *The person or an officer, director, general partner, or other*
9 *person owning or controlling, directly or indirectly, 10 percent or*
10 *more of the outstanding interests or equity securities of the person*
11 *applying for the license has, within the last 10 years of the date*
12 *of application, committed any act involving dishonesty, fraud, or*
13 *deceit, or been convicted of, or pleaded nolo contendere to, a crime*
14 *substantially related to the qualifications, functions, or duties of*
15 *a person engaged in the business of servicing student education*
16 *loans.*

17 (3) *The person or an officer, director, general partner, or other*
18 *person owning or controlling, directly or indirectly, 10 percent or*
19 *more of the outstanding interests or equity securities of the person*
20 *applying for the license has violated any provision of this chapter.*

21 (c) *The commissioner shall, within 60 days from the filing of a*
22 *full and complete application for a license, including the receipt*
23 *of background and investigative reports from the Department of*
24 *Justice or other government agencies, and the payment of required*
25 *fees, either grant a license pursuant to this chapter or provide a*
26 *written explanation for the denial.*

27 (d) *The proceedings for a denial of a license shall be conducted*
28 *in accordance with Chapter 5 (commencing with Section 11500)*
29 *of Part 1 of Division 3 of Title 2 of the Government Code.*

30 22660.20. (a) *A license shall remain in effect until the license*
31 *is either suspended or revoked by the commissioner or surrendered*
32 *by the licensee. The commissioner may suspend or revoke a license*
33 *issued under this chapter if the commissioner finds that the licensee*
34 *violated any provision of this chapter or if any fact or condition*
35 *exists which, if it had existed at the time of the initial application*
36 *for the license, clearly would have warranted a denial of the*
37 *license. The commissioner shall not refund a license fee if the*
38 *license is surrendered, revoked, or suspended prior to the*
39 *expiration of the period for which it was issued.*

(b) A licensee that ceases to engage in the business regulated by this chapter and desires to no longer be licensed shall inform the commissioner in writing and, at that time, surrender the license and all other indicia of license to the commissioner. The licensee shall file a plan for the withdrawal from regulated business, and the plan shall include a timetable for the disposition of the business. The plan shall also include a closing audit, review, or other agreed-upon procedures performed by an independent certified public accountant prescribed by rule or order of the commissioner. Upon receipt of the written notice and plan, the commissioner shall review the plan and, if satisfactory to the commissioner, shall accept the surrender of the license. A license is not surrendered until its tender is accepted in writing by the commissioner after a review, and a finding has been made on the licensee's plan required to be filed by this section, and a determination has been made that there is no violation of this chapter.

(c) The licensee shall notify the commissioner, in writing, of any change in the information provided in the application for a license, as applicable, not later than 10 business days after the occurrence of the event that results in the information becoming inaccurate.

(d) The commissioner may deem an application for a license abandoned if the applicant fails to respond to any request for information required by the commissioner or department during an investigation of the application. The commissioner shall notify the applicant, in writing, that if the applicant fails to submit responsive information no later than 60 days after the date the request for information was made, the application shall be deemed abandoned. An application filing fee paid prior to the date an application is deemed abandoned shall not be refunded. Abandonment of an application pursuant to this subdivision shall not preclude the applicant from submitting a new application and fee for a license.

(e) A licensee shall only engage in business as a student loan servicer at the place of business on the license. A change of location of a place of business of a licensee shall require prior written notice to the commissioner. Only one place of business shall be authorized to engage in business under a license. A license shall not be transferable or assignable.

22660.25. (a) A licensee shall do all of the following:

1 (1) *Maintain staff adequate to meet the requirements of this*
2 *chapter, as prescribed by regulation or order of the commissioner.*

3 (2) *File with the commissioner any report required by regulation*
4 *or order of the commissioner.*

5 (3) *Comply with the provisions of this chapter, and with any*
6 *regulation or order of the commissioner.*

7 (4) *Submit to periodic examination by the commissioner as*
8 *required by this chapter.*

9 (5) *Advise the commissioner by amendment to its application*
10 *of any material judgment filed against, or bankruptcy petition filed*
11 *by, the licensee within five days of the filing.*

12 (6) *Comply with all applicable state and federal laws and tax*
13 *return filing requirements.*

14 (7) *Comply with any other requirement established by regulation*
15 *or order of the commissioner.*

16 (b) *The commissioner may require an applicant to submit a*
17 *statement signed under penalty of perjury agreeing to comply with*
18 *the requirements of this section.*

19 (c) *The commissioner may revoke or suspend a license for a*
20 *licensee's failure to comply with the requirements of section.*

21 22660.30. (a) *A licensee shall not do any of the following:*

22 (1) *Directly or indirectly employ any scheme, device, or artifice*
23 *to defraud or mislead a student loan borrower.*

24 (2) *Engage in any unfair or deceptive practice toward any*
25 *student loan borrower or misrepresent or omit any material*
26 *information in connection with the servicing of a student education*
27 *loan, including, but not limited to, misrepresenting the amount,*
28 *nature or terms of any fee or payment due or claimed to be due*
29 *on a student education loan, the terms and conditions of the student*
30 *education loan agreement, or the student loan borrower's*
31 *obligations under the student education loan.*

32 (3) *Obtain property of a student loan borrower by fraud or*
33 *misrepresentation.*

34 (4) *Knowingly misapply or recklessly apply payments made by*
35 *a student loan borrower to the outstanding balance of a student*
36 *education loan.*

37 (5) *Knowingly or recklessly provide inaccurate information to*
38 *a credit bureau regarding a student loan borrower.*

39 (6) *Fail to report both the favorable and unfavorable payment*
40 *history of the student loan borrower to a nationally recognized*

1 consumer credit bureau at least annually if the loan servicer
2 regularly reports information to a credit bureau.

3 (7) Refuse to communicate with an authorized representative
4 of the student loan borrower who provides a written authorization
5 signed by the student loan borrower; provided the licensee may
6 adopt procedures reasonably related to verifying that the
7 representative is in fact authorized to act on behalf of the student
8 loan borrower.

9 (8) Negligently or intentionally make any false statement or
10 knowingly and willfully make any omission of a material fact in
11 connection with any information or reports filed with the
12 commissioner, the department, or another governmental agency.

13 (b) The commissioner may revoke or suspend a license for a
14 licensee's failure to comply with the requirements of section.

15 22660.35. (a) The commissioner shall have the authority to
16 conduct investigations and examinations as follows:

17 (1) For purposes of initial licensing, license suspension, license
18 revocation, or general or specific inquiry or investigation to
19 determine compliance application requirements, the commissioner
20 may access, receive, and use any books, accounts, records, files,
21 documents, information, or evidence, including, but not limited
22 to, any of the following relating to the business of servicing student
23 education loans:

24 (A) Criminal, civil, and administrative history information.

25 (B) Personal history and experience information, including, but
26 not limited to, independent credit reports obtained from a consumer
27 credit reporting agency.

28 (C) Any other documents, information, or evidence that the
29 commissioner deems relevant to the inquiry or investigation
30 regardless of the location, possession, control, or custody of those
31 documents, information, or evidence.

32 (2) For the purposes of investigating violations or complaints
33 arising under this chapter against a licensee or person, the
34 commissioner may direct, subpoena, or order the attendance of
35 and examine under oath all persons whose testimony may be
36 required about the student education loan or account of the student
37 loan borrower.

38 (b) In making any examination or investigation authorized by
39 this section, the commissioner may control access to any documents
40 and records of the licensee or person under examination or

1 investigation. The commissioner may take possession of the
2 documents and records or place a person in exclusive charge of
3 the documents and records in the place where they are usually
4 kept. During the period of control, no person shall remove or
5 attempt to remove any of the documents and records except
6 pursuant to a court order or with the consent of the commissioner.
7 Unless the commissioner has reasonable grounds to believe the
8 documents or records of a licensee or person have been, or are at
9 risk of being, altered or destroyed for purposes of concealing a
10 violation of this chapter, the licensee or owner of the documents
11 and records shall have access to the documents or records as
12 necessary to conduct its ordinary business affairs.

13 SEC. 5. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

22 SECTION 1. ~~Article 24 (commencing with Section 70050) is~~
23 ~~added to Chapter 2 of Part 42 of Division 5 of Title 3 of the~~
24 ~~Education Code, to read:~~

25
26 ~~Article 24. Student Loan Borrowers' Bill of Rights~~
27

28 ~~70050. This act shall be known, and may be cited, as the~~
29 ~~Student Loan Borrowers' Bill of Rights.~~

30 ~~70051. The Legislature finds and declares all of the following:~~

31 ~~(a) Student loan debt is a national crisis. More than 40,000,000~~
32 ~~people in the United States owe some amount of student~~
33 ~~educational loan debt. Total student educational debt in the United~~
34 ~~States has crossed the trillion dollar mark. It currently exceeds one~~
35 ~~trillion two hundred billion dollars (\$1,200,000,000,000),~~
36 ~~surpassing both the amount of credit card debt and car loans. With~~
37 ~~college costs continuing to rise, student educational debt continues~~
38 ~~to rise and there is no reduction in sight.~~

39 ~~(b) While California's financial aid programs are some of the~~
40 ~~strongest in the nation and our state's college graduates have among~~

1 the lowest educational debt burdens, California students and
2 graduates still incur significant debt. According to the Institute for
3 College Access & Success, 55 percent of California's graduating
4 class of 2014 has student educational loan debt. According to the
5 United States Department of Education, as of January 2015, there
6 were approximately 4,156,000 student educational loan borrowers
7 in California, and the total student educational loan debt
8 outstanding for Californians was about one hundred twelve billion
9 dollars (\$112,000,000,000).

10 (e) Student educational loan debt is a drag on the state's
11 economy, preventing borrowers from achieving financial
12 independence, buying property, and starting businesses.

13 (d) Student educational loan servicers administer student loans,
14 serving as a critical link between borrowers and lenders in
15 managing accounts, processing payments, and communicating
16 directly with borrowers. That said, according to the federal
17 Consumer Financial Protection Bureau (CFPB), there are no
18 consistent, marketwide federal standards for student educational
19 loan servicing. Currently, California does not have standards for
20 student loan servicing.

21 (e) The CFPB released a report in September 2015 that found
22 that student educational loan borrowers encounter servicers that
23 discourage borrower-friendly alternative payment plans, fail to
24 respond to questions and payment processing errors, and fail to
25 provide sufficient information to borrowers regarding payments,
26 benefits, interest rates, and other charges.

27 (f) Therefore, it is the intent of the Legislature that, as of the
28 enactment of this act, every student educational loan borrower
29 receive all of the following rights:

30 (1) The right to meaningful access to federal affordable
31 repayment and loan forgiveness benefits for which he or she is
32 eligible.

33 (2) The right to reliable information about his or her student
34 educational loan and loan repayment options.

35 (3) The right to quality customer service and fair treatment.

36 70052. (a) For purposes of this section, the following terms
37 have the following meanings:

38 (1) "Student educational loan" means any loan primarily for
39 personal use to finance education or other school-related expenses.

1 ~~(2) “Student loan borrower” means any resident of this state~~
2 ~~who has received or agreed to pay a student educational loan, or~~
3 ~~any person who shares responsibility with that resident for repaying~~
4 ~~the student educational loan.~~

5 ~~(3) “Student loan servicer” means, to the extent authorized by~~
6 ~~federal law, any entity or person, wherever located, responsible~~
7 ~~for the servicing of any student educational loan to any student~~
8 ~~loan borrower. Student loan servicer does not include banks or~~
9 ~~credit unions.~~

10 ~~(b) Student loan servicers shall provide each of their student~~
11 ~~loan borrowers with all of the following:~~

12 ~~(1) Reliable information about the borrower’s educational loan~~
13 ~~and repayment options.~~

14 ~~(2) Quality customer service and fair treatment.~~

15 ~~(3) Meaningful access to federal affordable repayment and loan~~
16 ~~forgiveness benefits available to the borrower.~~

17
18
19 CORRECTIONS:

20 Digest Text—Page 2.